

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the )  
Commission's own motion into the )  
Operations and practices of Mineral City )  
Water Company and its Owner and )  
Operator, JoAnn Perkins, and Order to )  
Show Cause why findings should not be )  
entered by the Commission under )  
Public Utilities Code Section 855. )  
\_\_\_\_\_ )

**FILED**  
**PUBLIC UTILITIES COMMISSION**  
**OCTOBER 10, 2001**  
**SAN FRANCISCO OFFICE**  
**I.01-10-003**

**ORDER INSTITUTING INVESTIGATION**  
**AND TO SHOW CAUSE**

**I. INTRODUCTION**

The Commission's Legal Division has indicated, in the Declaration of Jason Zeller, attached hereto, that it has reason to believe that Respondents Mineral City Water Company, Inc. ("Mineral"), and JoAnn Perkins ("Perkins") are unwilling or unable to adequately serve Mineral City's ratepayers, and have been unresponsive to California Department of Health Services orders. There is also reason to believe that Respondents contemplate abandoning the water system serving Respondents' customers. The purpose of this proceeding is to allow the Respondents to show cause why the Commission should not make findings under Public Utilities Code § 855.<sup>1</sup>

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<sup>1</sup> Unless otherwise noted, all statutory references herein are to the California Public Utilities Code.

Section 855 provides:

Whenever the commission determines, after notice and hearing, that any water or sewer system corporation is unable or unwilling to adequately serve its ratepayers or has been actually or effectively abandoned by its owners, or is unresponsive to the rules or orders of the commission, the commission may petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of a receiver to assume possession of the property and to operate its system upon such terms and conditions as the court shall prescribe. The court may require, as a condition to the appointment of such receiver, that a sufficient bond be given by the receiver and conditioned upon compliance with the orders of the court and the commission, and the protection of all property rights involved. The court shall provide for disposition of the facilities and system in like manner as any other receivership proceeding in this state.

As required by this statute, we have scheduled a hearing at the U.S. Forest Service, Northern California Service Center, 6101 Airport Road, Redding, CA 96002, at 10:00 a.m. on November 16, 2001.

Attached to this order is a declaration by Commission counsel Jason Zeller, documenting the long history of proceedings at the Commission against Mineral. The previous proceedings have involved a series of compliance actions and penalties that the State Department of Health Services, Division of Drinking Water and Environmental Management (“Department”) has taken against Mineral. A listing of the dates and numbers of the various compliance actions that the Department has taken is attached to this Order to Show Cause.

In various proceedings, the Department found that Mineral was not in compliance with the state’s surface water treatment rule, had failed to develop adequate new groundwater sources, was out of compliance with state regulations governing lead and copper in the water distribution system, and had failed to comply orders of the Department. Efforts by the Department to enforce its orders

continue, however, the owner of Mineral has expressed an interest in allowing the company to enter into a receivership. Given this situation, the order to show cause issued today is necessary to allow the Commission the option to proceed under section 855 for the protection of the health and safety and financial interests of Mineral's ratepayers.

## **II. BACKGROUND**

The adequacy, purity and safety of Mineral's water supply has been a matter of concern to the Department since 1991 when the State of California adopted new surface water filtration and disinfection treatment regulations. The regulations required all water systems to comply with their terms by June 29, 1993. Despite repeated enforcement efforts by the Department – beginning in 1994 – Mineral remains out of compliance with the aforementioned regulations. A detailed accounting of the Department's various compliance agreements and other enforcement activities appears in the Attached Declaration of Gunther Sturm, a Department employee who has been involved in the Department's enforcement efforts against Mineral.

Mineral has taken a number of steps to comply with the Department's enforcement orders including having three separate wells drilled as replacement groundwater sources of supply; however for a variety of reasons (including adequacy of supply and purity issues,) these efforts have not been successful. Although the Department has repeatedly given Mineral extensions of time to comply with its enforcement orders, Mineral continued to rely on untreated water from Martin Creek as a source of supply, in contravention of applicable state regulations. Several improvements in the system were completed in 1998 which allowed Mineral to discontinue the use of untreated Martin Creek water, however, recent decreases in water supply have required the use of Martin Creek to keep the system in water.

Also, when the purity of the water in Mineral's system in late 1999 was checked by an independent laboratory, the level of lead in the water was above the level where action is required under state regulations; however, Mineral failed to perform the required follow-up action after the violation was uncovered, and Mineral failed to appropriately notify the Department about the violation.

In 2000 Mineral began having problems meeting water demands relying exclusively on groundwater sources, because of decreases in the production from its well and springs. This problem was particularly acute during summer weekends. In response, Mineral began (on a limited basis) once again relying on Martin Creek as a water source. In February of 2001, Mineral mailed a notice to its customers informing them that it was once again relying on Martin Creek as a water source, and advising them that the water should be boiled before drinking. The Department was not informed by Mineral about its decision to resume using Martin Creek as a water source.

In March of 2001, the Department initiated another enforcement action against Mineral. In response Mineral retained Luhdorff and Scalmanini Consulting Engineers. Luhdorff prepared a technical memorandum report that identified the deficiencies in the existing system and proposed interim remedial measures. Among these measures was the installation of a filtration system capable of processing 20 gallons per minute of water. Luhdorff proposed that the filtration facility could be installed by June 15, 2001.

Instead of carrying out its stated intentions to install a filtration system, in late May of 2001, Mineral formally informed the Department that it would not comply with its latest compliance order, No. 01-21-01, (O) 52001. In a May 22, 2001 letter from JoAnn Perkins, President of Mineral, Ms. Perkins stated that Mineral would not make the improvements called for in compliance order, 01-21-01, (O) 52001. The letter also expressed Ms. Perkins' desire to place Mineral into receivership.

Subsequent to Ms. Perkins' May correspondence to the Department, Mineral was given a citation by the Department in late June and mid-July by the Department for its failure to comply with the recommendations of its consulting engineers. These citations were followed by another citation in August of 2001, for Mineral's failure to provide an engineering report to the Department by August 1, 2001. On August 14, 2001, Mineral informed the Department that it was instituting a mandatory water-rationing program because of continuing supply problems.

### **III. DISCUSSION**

In view of the above recitation, and the more detailed information in the Declaration of Gunter Sturm, it is clear that Mineral has repeatedly violated numerous Department citations and has no intention to comply in the future. The current situation is a threat to the health and safety of Mineral's customers. In addition, Mineral's President, Ms. Perkins, has unambiguously stated her intention to continue to flout the Department's authority and citations. Ms. Perkins has also expressed her interest in placing Mineral into receivership. The exhibits to the declaration of Gunther Sturm demonstrate that Respondents have not complied timely numerous Department Orders, when they have complied at all. The only remaining issue is whether, given Respondents' failure to comply with these Department orders, any good cause exists to forgo remedies under § 855.

Ms. Perkins stated refusal to comply with the reasonable requirements and regulations of the Department illustrates that the Commission is not likely to have any greater success in ensuring compliance with its own enforcement orders should it decide to pursue this course of action. Mineral has been afforded every opportunity to comply with Department citations and orders and has failed to do so. The next step is for Mineral to appear in a formal show cause hearing.

Under § 701, this Commission is “empowered to supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.” (See also Cal. Const., Art. 12, § 6.) In the case of utilities serving in competitive markets, the Commission can revoke a certificate of public convenience and necessity (CPCN) and require the problematic entity to cease utility operations. However, in the case of a water company, that remedy would leave the innocent captive customers, dependent on water service as a basic need of life, in an untenable situation. Hence, § 855 provides one course of action that this Commission can elect to ensure that basic orders of the Commission are followed and the public convenience and necessity are served.

An order to show cause has been described as “in the nature of a citation to a party to appear at a stated time and place to show cause why the requested relief should not be granted.” (*Difani v. Riverside County Oil Co.* (1927) 201 Cal.210, 213-214; 6 Witkin, Cal Proc. (4<sup>th</sup> ed. 1997) Proceedings Without Trial, § 55, at 454.) In an order to show cause proceeding, the burden is on the respondent to show good cause why the proposed legal action should not go forward. Here, the action in question is a petition to superior court under § 855 for the appointment of a receiver to assume possession of Mineral’s property and to operate its system. A potential receiver, Mineral Co. Water Board, is available in Mineral City (Tehama County) to perform this service. Unless Mineral can show good cause why the Commission should not file such a petition, a hearing should be held at the Commission to initiate the receivership process.

The Declaration of Gunther Sturm illustrates the factual history of the Department’s efforts to secure compliance, thereby demonstrating good cause why the Commission should issue a show cause Order against Mineral. Under § 855, Mineral Water Company is entitled to notice and a full hearing in superior court, in

which it will receive an opportunity to explain why the allegations set forth in any declaration are insufficient grounds for the court to rely on. Therefore, Mineral Water Company is ordered to appear before this Commission at the date and time set, and show cause why the Commission should not find that it is unable to serve its customers adequately, and petition the superior court of Tehama County under § 855 for Bidwell's failure to comply with the Department's orders as set forth in Mr. Sturm's Declaration.

**IT IS ORDERED** that:

1. Mineral City Water Company, a corporation, and its President, JoAnn Perkins, are named as Respondents herein, and are hereby afforded an opportunity to show cause before the Commission why the agency should not enter findings that their conduct falls into one or more of the following categories:

- a. Mineral City Water Company is unable or unwilling to adequately serve its ratepayers;
- b. That Mineral City Water Company has been actually or effectively abandoned by its owners; or
- c. That Mineral City Water Company is unresponsive to the rules or orders of the Department of Health Services.

2. The underlying facts in the effort to enforce the various citations noted in Mr. Sturm's attached Declaration are settled. The Respondents have not been responsive to the Department's orders. Thus, this proceeding is limited to the question of whether the Respondents can show that their operational and financial conduct and pattern of non-compliance, separately or taken together, do not fall into one or more of the categories listed in Ordering Paragraph 1, above.

3. The respondents shall appear before the Commission on November 16, 2001 at 10:00 a.m., U.S. Forest Service, Northern California Service Center, 6101 Airport Road, Redding, CA 96002, and show cause as required by this order.

4. This ordering paragraph suffices as the “preliminary scoping memo” required by rule 6 (c) of the Commission’s Rules of Practice and Procedure. This proceeding is categorized as a ratesetting proceeding and is set for hearing solely on the order to show cause. This matter is not an enforcement proceeding, as Respondents will not be made subject hereby to fines or other enforcement penalties imposed by the Commission. Its purpose and effect are thus limited to determining whether the next step should be pursued in the statutorily designated court. The issues to be resolved in this proceeding are framed in the preceding ordering paragraphs, and are limited to the question of whether good cause can be shown why the Commission should not petition the superior court under § 855. This order, as to categorization of this proceeding, is appealable under the procedures in Rule 6.4. Any person filing a response to this Order Instituting Investigation shall state in the response any objections to the Order regarding the need for hearings, issues to be considered, or proposed schedule. However, objections must be confined to jurisdictional issues that could nullify any eventual decision on the merits, and not on factual assertions that are the subject of the hearing. The proceeding may be expedited as an emergency matter in order to protect Mineral City’s ratepayers.

5. The Executive Director shall cause personal service of this Order to made on Mineral City Water Company either by delivering a copy to JoAnn Perkins or by leaving a copy of the Order during usual office hours in Mineral City’s office at 22026 Grove Circle, Red Bluff, CA 96080, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the Order (by first class mail, postage prepaid) to Mineral City Water Company at the place where the copy of the Order was left. Service of the Order in this manner is deemed complete on the 5<sup>th</sup> day after mailing. This Order will also be mailed to Dennis Albright, Attorney at Law, counsel for Mineral at 715 Madison Street, P.O. Box 1076, Red Bluff, CA 96080.



This order is effective today.

Dated October 10, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

**DECLARATION OF JASON J. ZELLER**

I, Jason J. Zeller, declares as follows:

1. I am an attorney licensed to practice before the Courts in the State of California, and am an attorney for the California Public Utilities Commission, and have been assigned to coordinate the Commission's response to Mineral City Water Company.

2. I do hereby declare that I have read the Declaration of Gunther Sturm, of the California Department of Health Services, regarding the Mineral City Water Company. I have reason to believe that Mr. Sturm's declaration that details the enforcement activities, fines and other remedial measures that have been ordered by the Department of Health Services against Mineral City Water Company is accurate, and should be relied upon as a correct account of regulatory activities involving the Department and the Mineral City Water Company. Mr. Sturm's Declaration is true and correct to the best of my knowledge.

This declaration should have been attached to the Order to Show Cause that was issued on October 10, 2001, and was inadvertently omitted. It is being served on all parties that were served with the Order to Show Cause.

I declare under penalty of perjury under the laws of the State of California and that the foregoing is true and correct.

Executed this 17th day of October 2001, at San Francisco, California.

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Jason J. Zeller, Attorney  
California Public Utilities  
Commission